

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FOUNDRY NETWORKS, INC.,
a Delaware Corporation,

Plaintiff,

v.

ALCATEL USA RESOURCES, INC.
a Delaware Corporation,
ALCATEL INTERNETWORKING, INC.,
a California Corporation,
COMPAGNIE FINANCIÈRE ALCATEL
a French Corporation, and
ALCATEL S.A.,
a French Corporation,

Defendants.

**DECLARATION OF PHILIP A. ROVNER IN SUPPORT OF OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(b)(2)**

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Dated: November 22, 2006
Public Version: November 30, 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FOUNDRY NETWORKS, INC.,)	
a Delaware Corporation,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-470-SLR
)	
ALCATEL USA RESOURCES, INC.)	
a Delaware Corporation,)	(JURY TRIAL DEMANDED)
ALCATEL INTERNETWORKING, INC.,)	
a California Corporation,)	PUBLIC VERSION
COMPAGNIE FINANCIÈRE ALCATEL)	
a French Corporation, and)	
ALCATEL S.A.,)	
a French Corporation,)	
)	
Defendants.)	

**DECLARATION OF PHILIP A. ROVNER IN SUPPORT OF OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(b)(2)**

I, Philip A. Rovner, declare as follows:

1. I am a member of the law firm of Potter Anderson & Corroon LLP, counsel of record for Plaintiff Foundry Networks, Inc. ("Foundry").
2. I submit this declaration in support of Foundry's Answering Brief In Opposition to Defendants' Motion To Dismiss For Lack of Personal Jurisdiction.
3. Attached hereto as Exhibit A is a true and correct copy of a printout from Defendants' Alcatel's "Worldwide" online webpage, *at* <http://www.alcatel.com/?geoUsRedirect=geoUsRedirect> (last accessed on November 20, 2006).
4. Attached hereto as Exhibit B is a true and correct copy of a printout from Defendants' Alcatel "United States" online webpage, *at* <http://www.usa.alcatel.com/> (last accessed on November 20, 2006).

5. Attached hereto as Exhibit C is a true and correct copy of a printout from the U.S. Patent & Trademark Office's online database, at <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetacgi%2FPTO%2Fsearch-bool.html&r=0&f=S&l=50&TERM1=alcatel&FIELD1=ASNM&co1=AND&TERM2=&FIELD2=&d=PTXT> (last accessed November 20, 2006). The printout is the first of multiple pages resulting from a search for all patents where "Alcatel" is named as an assignee.

6. Attached hereto as Exhibit D is a true and correct copy of a printout from the IEEE's website, at http://www.ieee802.org/1/linksec/meetings/Mar03/LinkSecAttendance_0303.pdf (last accessed November 20, 2006), listing Gerard Vergnand as an attendee at the Link Security Executive Committee Study Group on March 10-12, 2003. Mr. Vergand's phone number is listed as +33 155 66 5706; his email is listed as gerard.vergnand@alcatel.fr.

7. Attached hereto as Exhibit E is a true and correct copy of the original Complaint for Patent Infringement and for Declaratory Judgment of Noninfringement filed by Alcatel USA Resources, Inc. and Alcatel Internetworking, Inc. on June 21, 2005 in the action entitled: *Alcatel USA Resources, Inc. and Alcatel Internetworking, Inc. v. Foundry Networks, Inc.*, D. Del., C.A. No. 05-418-SLR (the "Delaware litigation").

8. REDACTED

REDACTED

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Dated: November 22, 2006
Public Version: November 30, 2006

/s/ Philip A. Rovner
Philip A. Rovner

EXHIBIT A


ALCATEL
BROADEN YOUR LIFE

Worldwide

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United States



Solutions For

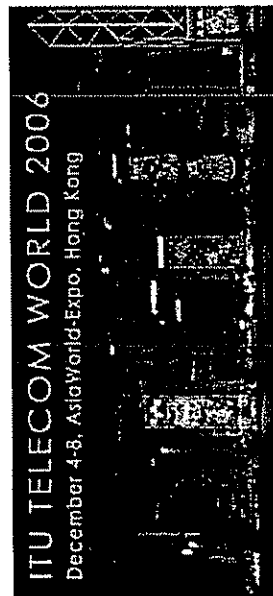
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Alcatel @ ITU Telecom World 2006, Hong Kong Alcatel is all set to establish itself at this much-awaited event with a comprehensive showcase of solutions, presentations, and briefings that address the needs of high growth markets and the transformation of service provider networks in them.

News Monday, November 20, 2006

Cingular Wireless selects Alcatel multiservice solution as operator migrates to IP

Alcatel and Lucent receive CFIUS approval to proceed with proposed merger

Alcatel selected by CTM for Macau's IP transformation

Hanaro Telecom selects Alcatel for advanced broadband network

Cable & Wireless deploys Alcatel router technology for its Next Generation Network

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Alcatel awards the first « Alcatel Prize for the European Month of Photography »

By creating this prize, awarded to French Artist Philippe Ramette, Alcatel is reconfirming its support for photography as the theme of its cultural sponsoring activities.



Alcatel and Lucent merger agreement

Alcatel and Lucent receive CFIUS approval to proceed with proposed merger



Powering up on User-Centric Broadband Services

Hear what Alcatel has to offer for a seamless transition to user-centric broadband services in this exclusive line-up of

Alcatel Builds Next Generation Networks

10.65 Euro
Nov 20, 2006 at 17:37
New York
13.6 Dollars
Nov 20, 2006 at 13:59

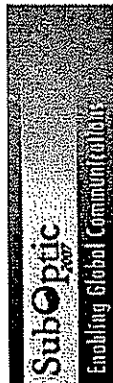
Alcatel provides communications solutions to telecommunication carriers, Internet service providers and enterprises for delivery of voice, data and video applications to their customers or employees. Alcatel brings its leading position in fixed and mobile broadband networks, applications and services, to help its partners and customers build a user-centric broadband world. With sales of EURO 13.1 billion and 58,000 employees in 2005, Alcatel operates in more than 130 countries.

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Join us at SubOptic 2007 and register prior to November 30 at a special early discounted rate.

EXHIBIT B



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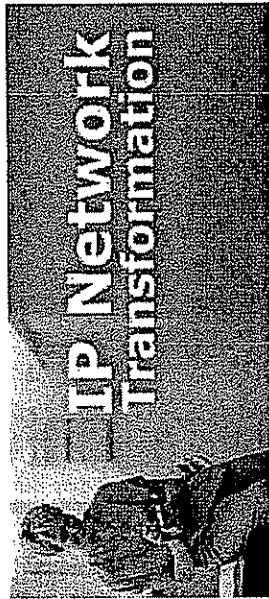
Paris

10.65 Euro

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[Alcatel leadership in healthcare communications recognized in multi-year deal.](#)

The University of Pittsburgh Medical Center has selected Alcatel to lead a \$ 300 million communications infrastructure upgrade.

[News](#) [Monday, November 20, 2006](#)

Cingular Wireless selects Alcatel multiservice solution as operator migrates to IP

Alcatel and Lucent receive CFIUS approval to proceed with proposed merger

Alcatel selected by CTM for Macau's IP transformation

Hanaro Telecom selects Alcatel for advanced broadband network

Cable & Wireless deploys Alcatel router technology for its Next Generation Network

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View class schedules and register for courses



[Alcatel and Lucent merger agreement](#)

Alcatel shareholders approve all proposed resolutions related to the merger with Lucent Technologies.



[Alcatel leads discussion on enhanced communications and business models!](#)

Alcatel will be a key industry speaker at the Yankee Group Decision Summit entitled, "The 2006 Telecom Industry Forum Reinventing Communications: The Impact of Ubiquity on Networks, Service Delivery and Business Models".

Alcatel Builds Next Generation Networks

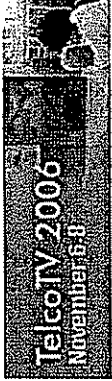
Nov 20, 2006 at 17:37

New York

13.6 Dollars

Nov 20, 2006 at 14:01

Alcatel provides communications solutions to telecommunication carriers, Internet service providers and enterprises for delivery of voice, data and video applications to their customers or employees. Alcatel brings its leading position in fixed and mobile broadband networks, applications and services, to help its partners and customers build a user-centric broadband world. With sales of EURO 12.3 billion and 56,000 employees in 2004, Alcatel operates in more than 130 countries.



2006 TelcoTV Conference & Expo

The 5th Annual Telco TV Conference & Expo is this year's premier event for telecom carriers interested in IPTV, and Alcatel is proud to be a Platinum sponsor with speakers throughout the event and an exhibit-packed booth.

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EXHIBIT C

USPTO PATENT FULL-TEXT AND IMAGE DATABASE

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Results of Search in US Patent Collection db for:

AN/alcatel: 4727 patents.

Hits 1 through 50 out of 4727

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PAT. NO.	Title
1 7,136,650	Method for routing messages between a mobile control and cell control functional entities of a distributed radio access network
2 7,136,597	Decision system for modulated electrical signals
3 7,136,401	Multiple output Raman fiber laser with stable and small output power for seed applications
4 7,136,388	Clock synchronization system and method for use in a scalable access node
5 RE39,378	Optical channel regulator and method
6 7,133,413	Time multiplexing method, and related arrangements to be used in a central station and network terminals of a communications network
7 7,133,360	Conditional bandwidth subscriptions for multiprotocol label switching (MPLS) label switched paths (LSPs)
8 7,133,359	Fast restoration mechanism and method of determining minimum restoration capacity in a transmission networks
9 7,132,620	Inductive thermal plasma torch
10 7,131,484	Modular architecture for thermal control in a spacecraft
11 7,131,109	Method of managing information in Java
12 7,130,877	Request processing switch
13 7,130,605	Method and device for synchronization and cancellation of a plurality on interfering signals in radio transmission with frequency reuse
14 7,130,537	Safety shutdown system for a WDM fiber optic communications network
15 7,130,397	Apparatus, and an associated method, for detecting a mass call event and for ameliorating the effects thereof
16 7,130,028	Method of detecting a luminous signal and lidar system
17 7,129,881	Pipeline analog to digital converter
18 7,129,848	Remote monitoring method and system
19 7,127,658	Method and encoder for implementing a fully protected multidimensional linear block code
20 7,127,527	Network element terminal data interface system and method































- 21 [7,127,133](#)  [Monolithically integrated optic triplexer and method for making same](#)
 - 22 [7,127,062](#)  [Hybrid circuit for a broadband modem](#)
 - 23 [7,127,006](#)  [Method for transmitting frames comprising bursts modulated with different modulation schemes on radio communication channel](#)
 - 24 [7,126,997](#)  [Multicarrier receiver](#)
 - 25 [7,126,949](#)  [Source identifier for MAC address learning](#)
 - 26 [7,126,943](#)  [Method and apparatus for interfacing a parallel connection](#)
 - 27 [7,126,910](#)  [Load balancing technique for a resilient packet ring](#)
 - 28 [7,126,678](#)  [Polarized lightwave reflectometry method \(POTDR\)](#)
 - 29 [7,123,994](#)  [Power consumption management method](#)
 - 30 [7,123,881](#)  [Method for improving performances of a mobile radiocommunication system using a power control algorithm](#)
 - 31 [7,123,841](#)  [Optical transmission system](#)
 - 32 [7,123,834](#)  [Transmission system and method for equalization of channels in the system](#)
 - 33 [7,123,619](#)  [Telecommunication network and a method for controlling such network](#)
 - 34 [7,121,120](#)  [Method of glazing an optical fiber preform with a plasma of reduced power](#)
 - 35 [7,120,833](#)  [Error codes in Agent X](#)
 - 36 [7,120,169](#)  [Network device and method for delay compensation of data packets](#)
 - 37 [7,119,754](#)  [Receiving antenna for multibeam coverage](#)
 - 38 [7,119,546](#)  [Method for single ended line testing and single ended line testing device](#)
 - 39 [7,118,076](#)  [Satellite comprising means for transferring heat from a shelf supporting equipment to radiator panels](#)
 - 40 [7,117,195](#)  [Method for deploying a service and a method for configuring a network element in a communication network](#)
 - 41 [7,116,732](#)  [Method and apparatus for decoding a bit sequence](#)
 - 42 [7,116,686](#)  [Transmitter for a very high speed digital subscriber line](#)
 - 43 [7,116,679](#)  [Multi-service network switch with a generic forwarding interface](#)
 - 44 [7,116,642](#)  [SONET/SDH data link administration and management](#)
 - 45 [7,116,470](#)  [Raman amplifying device and method for pump modulation](#)
 - 46 [7,114,182](#)  [Statistical methods for detecting TCP SYN flood attacks](#)
 - 47 [7,113,989](#)  [Command line interface processor](#)
 - 48 [7,113,741](#)  [Optimized method of transmitting multimedia content](#)
 - 49 [7,113,575](#)  [ADSL filter](#)
 - 50 [7,113,483](#)  [Dichotomy-based method of tracing a route between two nodes of a data network](#)
-

EXHIBIT D

Link Security Executive Committee Study Group Attendance List March 10-12, 2003

Name	Email	Telephone	Mon-Mon- Tu- Wed-			
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Link Security Executive Committee Study Group Attendance List March 10-12, 2003

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Link Security Executive Committee Study Group Attendance List March 10-12, 2003

Name	Email	Telephone	Mon-Mon- Tu- Wed-			
			AM	PM	PM	AM
Rommer, Stefan	stefan.rommer@erv.ericsson.com	+46 31 7470729	x			
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EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FILED
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DISTRICT OF DELAWARE
2005 JUN 21 PM 3:09

ALCATEL USA RESOURCES, INC.,)
a Delaware Corporation, and)
ALCATEL INTERNETWORKING, INC.,)
a California Corporation,)

Plaintiffs,)

v.)

FOUNDRY NETWORKS, INC.,)
a Delaware Corporation,)

Defendant.)

05 - 418

Civil Action No. _____

(JURY TRIAL DEMANDED)

**COMPLAINT FOR PATENT INFRINGEMENT
AND FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

Plaintiffs, Alcatel USA Resources, Inc. ("Alcatel Resources"), and Alcatel Internetworking, Inc. ("Alcatel Internetworking") hereby request a jury trial on all issues so triable, and allege upon knowledge as to their own acts and upon information and belief as to the acts of defendant, Foundry Networks, Inc. ("Foundry") as follows:

COUNT I - PATENT INFRINGEMENT

A. JURISDICTION AND VENUE

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. § 1338(a).

2. Defendant Foundry is a Delaware corporation with a principal place of business at 2100 Gold Street, San Jose, California 95164. Foundry has other office locations in the United States and world-wide. Foundry has committed acts of infringement in this judicial district, does regular business in this judicial district, and has a registered agent for service of process in this district. Venue is proper in this district under 28 U.S.C. §§ 1391(c)-(d) and 1400(b).

3. Alcatel Resources is a Delaware corporation with headquarters at 3400 W. Plano Parkway, Plano, Texas. Alcatel Resources owns all right, title and interest in and has standing to sue for infringement of the United States Patent Numbers listed below (the "Patents-in-Suit"). The Patents-in-Suit are attached hereto as Exhibits A through H, in the sequence below:

Number	Title	Short Description
5,301,192	"Temporary Information Storage System Comprising a Buffer Memory Storing Data Structured in Fixed or Variable Length Data Blocks"	The Queuing Patent
5,461,615	"Asynchronous Switching Node Distributing Cells Dynamically to Outputs Constituting an Irregular Group"	The Multicasting Patent
5,506,840	"Asynchronous Switching Node and Routing Logic Means for a Switching Element Used Therein"	The Load Balancing Patent
6,339,830	"Deterministic User Authentication Service for Communication Network"	The LAN Authentication Patent I
6,697,329	"Operator Directed Routing of Connections in a Digital Communications Network"	The Operator-Selected Path Patent
6,865,153	"Stage-Implemented QoS Shaping for Data Communication Switch"	The Quality of Service Patent
6,874,090	"Deterministic User Authentication Service for Communication Network"	The LAN Authentication Patent II
6,882,647	"Multiple Address Transport in Communication Networks"	The Forwarding Address Replacement Patent

B. FOUNDRY'S ACTS OF PATENT INFRINGEMENT

4. Foundry has infringed one or more claims of each of the Patents-in-Suit in violation of 35 U.S.C. § 271 through, among other activities, the manufacture, use, importation, sale and/or

offer for sale of various network switches and ancillary services and equipment, as described in more detail in the table herein. In addition to its direct infringement, Foundry has also knowingly and intentionally induced others to infringe under 35 U.S.C. § 271(b) (such as its customers and end-users throughout the United States) by intentionally aiding, assisting and encouraging their infringement; and Foundry has knowingly contributed to the infringement of others under 35 U.S.C. § 271(c) (such as its customers and end-users throughout the United States) by supplying its switching equipment and components thereof which are nonstaple articles of commerce having no substantial noninfringing use. The chart below represents Alcatel's current information as to Foundry equipment and components thereof and the patents which are infringed thereby:

Patent	ServerIron	NetIron	BigIron	FastIron	EdgeIron
The Queuing Patent		T	T	T	
The Multicasting Patent		T	T	T	
The Load Balancing Patent	T		T*		
The LAN Authentication Patent I		T	T	T	T
The Operator-Selected Path Patent		T**			
The Quality of Service Patent		T	T	T	
The LAN Authentication Patent II		T	T	T	T
The Forwarding Address Replacement Patent		T**			

T* BigServerIron

T** NetIron with MPLS Module

5. Foundry's infringement has injured Alcatel Resources, and Alcatel Resources is entitled to recover damages adequate to compensate it for such infringement, in no event less than a reasonable royalty.

C. WILLFUL INFRINGEMENT

6. Foundry has had actual and/or constructive notice of Foundry's infringement of the Patents-in-Suit, including actual pre-Complaint notice from Alcatel, in meetings and correspondence,

of its infringement of the '192, '615, '840, '830 and '329 Patents. Foundry will have had actual notice of its infringement of the '153, '090 and '647 Patents through its receipt of this Complaint.

7. Foundry's infringement has been willful and deliberate as to the '192, '615, '840, '830 and '329 Patents, and has occurred with knowledge of those patents, in violation of 35 U.S.C. § 284 & 2. Foundry's infringement has injured and will continue to injure Alcatel Resources, unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, use, importation, offers for sale and/or sale of Foundry products and/or services that fall within the scope of the Patents-in-Suit.

D. PRAYER FOR RELIEF

WHEREFORE, Alcatel Resources asks this Court to enter judgment against Foundry and against its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

A. An award of damages adequate to compensate Alcatel Resources for the patent infringement that has occurred, together with prejudgment interest from the date infringement of each respective Patent-in-Suit began, and costs;

B. An award to Alcatel Resources of all remedies available under 35 U.S.C. § 284, including increased damages up to three times the amount of compensatory damages found;

C. A finding that this case is exceptional and an award to Alcatel Resources of all remedies available under 35 U.S.C. § 285, including attorney's fees;

D. A permanent injunction prohibiting further infringement, inducement and contributory infringement of the Patents-in-Suit; and,

E. Such other and further relief as this Court or a jury may deem proper and just.

COUNT II – DECLARATORY JUDGMENT OF NON-INFRINGEMENT, INVALIDITY

A. JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1 et seq. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). Plaintiff Alcatel Internetworking seeks a declaratory judgment pursuant to Sections 2201 and 2202 of Title 28 of the United States Code.

9. Defendant Foundry is a Delaware corporation with a principal place of business at 2100 Gold Street, San Jose, California 95164. Foundry has other office locations in the United States and world-wide. Foundry does regular business in this judicial district and has a registered agent for service of process in this district. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c).

10. Plaintiff Alcatel Internetworking is a California corporation doing business in this judicial district, with offices at 26801 West Agoura Road, Calabasas, California 91301.

11. There is an actual controversy within this judicial district arising under the patent laws of the United States, 35 U.S.C. § 1 et seq., and Declaratory Judgments Act, 28 U.S.C. §§ 2201 et seq., between Alcatel Internetworking and Foundry. An actual controversy exists in that Foundry has accused Alcatel Internetworking of infringement of United States Patent No. 6,118,864 (attached hereto as Exhibit I) based on the sale of its OmniPCX products.

B. FACTUAL BACKGROUND

12. Alcatel Internetworking is engaged in the business of developing and providing leading edge telecommunications products for the global market. One such product line sold by Alcatel Internetworking is the OmniPCX.

13. On information and belief, Foundry claims to have acquired the '864 patent from Carmel Connection, Inc., which is the assignee listed on the patent. Foundry has instituted actions

for patent infringement against other companies (notably, Nortel Networks and Lucent) under the '864 patent. Hence, Foundry asserts that it owns and has standing to sue for infringement of the '864 patent.

14. Foundry has accused Alcatel Internetworking of infringement of the '864 patent through its sale of the OmniPCX products.

C. PATENT NON-INFRINGEMENT AND INVALIDITY

15. Alcatel Internetworking has not infringed any valid claim of the '864 patent in any way, i.e., directly, contributorily, or by inducement. Therefore, Alcatel Internetworking is entitled to a judicial declaration that it has not and does not infringe the '864 patent.

16. The '864 patent is invalid for failure to comply with one or more of the requirements, conditions, and provisions set forth in at least 35 U.S.C. §§ 101, 102, 103, and/or 112.

D. PRAYER FOR RELIEF

WHEREFORE, Alcatel Internetworking asks this Court to enter judgment against Foundry and against its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

- A. A judgment containing a declaration of invalidity of the '864 patent;
- B. A judgment containing a declaration that Alcatel Internetworking does not infringe any claim of the '864 patent;
- C. A finding that this case is exceptional and an award to Alcatel Internetworking of all remedies available under 35 U.S.C. § 285, including attorney's fees;
- D. A permanent injunction prohibiting further assertions that Alcatel infringes the '864 patent; and,
- E. Such other and further relief as this Court or a jury may deem proper and just.

Respectfully Submitted,

Alcatel USA Resources, Inc., and
Alcatel Internetworking, Inc.



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on November 30, 2006, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

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